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May 28, 2024

Via ECF

The Hon. Jessica G. L. Clarke
United States District Court
Southern District of New York
500 Pearl Street, Room 1040
New York, NY 10007

MEMO ENDORSED

Re: ***Mintz, et al. v. U.S. Securities and Exchange Commission***
No. 1:24-mc-00217-JGLC

Dear Judge Clarke:

We represent Petitioners Hal D. Mintz and Sabby Management LLC (“Sabby,” and collectively with Mintz, “Petitioners”) in the above-titled miscellaneous action, in which Petitioners move under Federal Rule of Civil Procedure 45 to quash a subpoena, dated March 25, 2024 issued by Respondent U.S. Securities and Exchange Commission (the “SEC”) to non-party Clear Street LLC (“Clear Street”) out of the matter of *U.S. Securities and Exchange Commission v. Mintz, et al.*, No. 23-cv-3201 (RMB) (AMD) (D.N.J.).

We submit this letter jointly with the SEC to respectfully request that – in the event Your Honor anticipates transferring this motion back to the issuing court – Your Honor first stay the briefing schedule set forth in its Order of May 20, 2024. (ECF No. 15). Although a request to stay a briefing schedule so soon after its issuance would be unusual in the typical case, the parties believe such relief is appropriate here so that (i) the parties may address their remaining briefing to Third Circuit law, rather than Second Circuit law, and (ii) so that the issuing Court may review and, if necessary, reorder the schedule following transfer.

As the Court’s May 20, 2024 Order observed, under Rule 45(f), the “court where compliance [with a subpoena] is required” may transfer a motion to quash to the issuing court with the consent of the person subject to the subpoena, or in exceptional circumstances. Here, the person subject to the subpoena – Clear Street – consents to transfer of the motion, as set forth more fully in a separate letter to the Court, filed contemporaneously with this letter motion.

Without anticipating the Court’s ultimate decision, the parties believe that – should the Court plan to transfer the motion to the issuing court now that Clear Street has noted its consent – the present briefing schedule should be stayed, for two principal reasons:

First, following transfer, the motion will be heard in the District of New Jersey, which is subordinate to the Third Circuit Court of Appeals. Although case law is not especially clear on what law controls upon cross-Circuit transfer of a motion to quash, the parties anticipate that the presiding judge in the issuing court, the Hon. Renée Marie Bumb, or the assigned magistrate, the

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Hon. Ann Marie Donio, will prefer that the parties brief them on Third Circuit law, or will at least prefer to hear from the parties first on any potential choice- or conflict-of-law issues. Because Petitioners have already filed their opening memorandum of law, moreover, Petitioners intend – with the SEC’s consent – to seek leave to submit a supplemental brief with the issuing court addressing Third Circuit law, a filing not presently authorized under the existing schedule.

Second, following transfer, the parties intend to bring the motion to quash to the attention of Judge Bumb and Judge Donio and request further guidance from them confirming which judge will hear the motion (likely, but not necessarily Judge Donio) and what changes to the schedule, if any, will best accommodate the reviewing judge. As both Judge Bumb and Judge Donio have pre-motion conference rules similar to Your Honor’s, the issuing court may even direct the parties to present the motion through a less formal procedure than completed briefing.

Accordingly, to avoid potentially wasteful briefing and to permit the issuing court to revisit the schedule on Petitioners’ motion to quash as it may deem prudent, the parties jointly and respectfully request that – should the Court anticipate transferring the motion to the District of New Jersey – the Court stay the existing briefing schedule.

The parties remain available to answer any questions the Court may have or hold conference on this application if the Court so desires.

Respectfully submitted,

/s/ Michael Van Riper

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Application GRANTED. The briefing schedule set out in ECF No. 15 is hereby STAYED. The Clerk of Court is directed to TRANSFER this matter to the District of New Jersey.

SO ORDERED.

A handwritten signature in blue ink that reads "Jessica Clarke". The signature is written in a cursive, flowing style.

JESSICA G. L. CLARKE
United States District Judge

Dated: May 29, 2024
New York, New York